STATE OF MICHIGAN

COURT OF APPEALS

KAREN GILBERT,

Plaintiff-Appellant,

v

NADIA, INC., d/b/a THRIFTY SCOT SUPER MARKET,

Defendant-Appellee.

UNPUBLISHED
February 16, 2001

No. 216227
Wayne Circuit Court
LC No. 97-713047-NO

Before: Hood, P.J., and Doctoroff and K. F. Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order denying her motion for judgment notwithstanding the verdict (JNOV) or, in the alternative, a new trial. We affirm.

On April 20, 1996, at approximately 7:20 p.m., plaintiff was walking through defendant's grocery store when she allegedly fell due to a puddle of juice on the floor. Plaintiff alleged that she hit her head and left side on the ground as a result of the fall. Plaintiff was helped from the floor by her friend, purchased items, and went home. Her friend then took her to the hospital for treatment. After the initial hospital visit, plaintiff continued to see her family physician and other physicians allegedly as a result of the fall. Plaintiff resigned from her place of employment eight months prior to trial. Plaintiff explained that she was unable to work to the best of her ability and due to memory problems.

On cross-examination, plaintiff's testimony was repeatedly impeached. She admitted that symptoms that she attributed to the fall had been experienced prior to the fall. Additionally, plaintiff's employer testified that plaintiff was promoted at work and there was no change in job performance following the slip and fall. While she asserted that her glasses were for safety purposes, plaintiff, when pressed, acknowledged that she required corrective lenses. During trial, defendant moved to exclude evidence that had not been provided during discovery. The receipt from the store was presented and admitted at trial over defense counsel's objections. Defense counsel also objected to the admission of a letter from Dr. John J. Blase that was written a mere three weeks prior to trial and was not provided in discovery. An offer of proof that delineated the specific contents of the letter did not occur, and the letter was not preserved in the lower court record for appellate review. The trial court did not admit the letter based on the allegation that the letter was cumulative to other evidence presented at trial.

The jury awarded plaintiff $2900 for past medical expenses and $720 for past wage loss. The jury did not award past or future noneconomic damages. The jury also concluded that plaintiff was fifty percent comparatively negligent. Plaintiff moved for JNOV, new trial, or additur, arguing that the verdict was inconsistent when defendant was held responsible for the injury, but damages for pain and suffering were not awarded. Plaintiff's motion was denied.

Plaintiff first argues that the trial court erred in denying her motion for JNOV, new trial, or additur. We disagree. Our review of a motion for JNOV is de novo. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 260; 617 NW2d 777 (2000). When reviewing the denial of a motion for JNOV, we review the evidence and all legitimate inferences in the light most favorable to the nonmoving party. *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998). If reasonable jurors could have reached different conclusions, the jury verdict must stand. *Morinelli, supra* at 260-261. Our review of a denial of a motion for a new trial is for an abuse of discretion. *Phinney v Perlmutter*, 222 Mich App 513, 525; 564 NW2d 532 (1997). We give substantial deference to the trial court's conclusion that a verdict was not against the great weight of the evidence. *Id*. Lastly, we will reverse a trial court's decision regarding a motion for additur only if an abuse of discretion is shown. *Phillips v Deihm*, 213 Mich App 389, 404; 541 NW2d 566 (1995). The proper consideration in denying a motion for additur is whether the jury award is supported by the evidence. *Arnold v Darczy*, 208 Mich App 638, 640; 528 NW2d 199 (1995). "An abuse of discretion exists where an unprejudiced person, considering the facts on which the trial court made its decision, would conclude that there was no justification for the ruling made." *Szymanski v Brown*, 221 Mich App 423, 431; 562 NW2d 212 (1997).

Plaintiff's contention that the verdict was inconsistent is without merit. The credibility of plaintiff's assertions of impairment and loss were for the trier of fact, *Triple E v Mastronardi*, 209 Mich App 165, 174; 530 NW2d 772 (1995), and the jury did not validate plaintiff's assertions. Furthermore, "[t]here is no legal requirement that a jury award damages simply because liability was found." *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 173; 568 NW2d 365 (1997).

In the present case, plaintiff testified that she slipped and fell in defendant's supermarket and suffered an injury that caused her to go to the hospital. The jury found that defendant was fifty percent liable for that incident. However, plaintiff also testified that she suffered memory loss, headaches, neck and back pain, and ultimately resigned from her place of employment as a result of the slip and fall. Defendant was able to demonstrate that the symptoms experienced post-fall also occurred before the fall, and plaintiff managed to function at work prior to the fall. Also, plaintiff's supervisor testified that plaintiff was promoted due to her performance and continued to be promoted after the slip and fall. There was no testimony by the supervisor or other employer that the slip and fall impacted plaintiff's work performance. There is no absolute standard to measure personal injury awards, and such awards, particularly those for pain and suffering, rest with the sound judgment of the trier of fact. *Bosak v Hutchinson*, 422 Mich 712, 736; 375 NW2d 333 (1985). Accordingly, the trial court properly denied plaintiff's motion for JNOV, new trial, or additur.

Plaintiff next argues that the trial court erred in failing to admit a letter written by Dr. Blase. We disagree. We review the trial court's ruling excluding evidence for an abuse of

discretion. *LeGendre v Monroe County*, 234 Mich App 708, 721; 600 NW2d 78 (1999). Review of the record on appeal reveals that discovery closed on December 9, 1997. There is no order in the lower court record that extends the discovery period. The letter was allegedly drafted on August 4, 1998, a mere three weeks prior to trial. Defense counsel alleged that he was not provided with a copy of the letter, and the letter was a surprise because Dr. Blase was not a witness on plaintiff's witness list. Plaintiff's counsel failed to address the allegations raised by defense counsel or explain why the letter had not been presented. Exclusion of evidence is an appropriate remedy for violation of discovery practice. *Farrell v Automobile Club of Michigan*, 155 Mich App 378, 388; 399 NW2d 531 (1986). Accordingly, we cannot conclude that the trial court abused its discretion in excluding the evidence.[1]

Affirmed.

/s/ Harold Hood
/s/ Martin M. Doctoroff
/s/ Kirsten Frank Kelly

[1] When this issue was raised on the first day of trial, defense counsel asserted failure to provide discovery, unfair surprise, and cumulative evidence. Plaintiff's counsel argued that the evidence was not cumulative, but did not present the letter as an offer of proof for the trial court to examine the exact content of the letter. "In order to predicate error on a ruling excluding evidence, the substance of the evidence must have been made known to the court. MRE 103(a)(2)." *Anderson v Harry's Army Surplus, Inc*, 117 Mich App 601, 608; 324 NW2d 96 (1982). The content of the letter was not presented to the court on the record, and therefore, we cannot conclude whether the letter was cumulative. On the last day of trial, plaintiff's counsel revisited the issue of the admission of this August 4, 1998, letter, again arguing that the letter was not cumulative. However, the letter was not preserved in the record on appeal, and an offer of proof was not made at the time of the second request. It is the duty of the appellant to file the full record on appeal, and our review is limited to what is presented on appeal. *Band v Livonia Associates*, 176 Mich App 95, 103-104; 439 NW2d 285 (1989). We will not consider any alleged evidence or testimony where there is no record support. *Id.* The failure to present a formal offer of proof and preserve the letter with the record on appeal precludes us from determining whether the content was cumulative to evidence existing at trial.